

## **TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 5510, 8389, 8553 and 8555 of the Fish and Game Code and to implement, interpret or make specific sections 7850, 7850.5, 8043, 8053, 8389 and 8550-8556 of said Code, proposes to amend Section 164, Title 14, California Code of Regulations, relating to the herring eggs on kelp fishery.

### **Informative Digest/Policy Statement Overview**

Under existing law, herring eggs on kelp (HEOK) may be taken for commercial purposes only under a revocable, nontransferable permit, subject to such regulations as the Fish and Game Commission shall prescribe. Current regulations specify permit limitations; season; fishing area; permittee categories and qualifications; permit conditions; royalty fees; permit application procedures; permit performance deposit requirements; gear, fishing and harvesting restrictions; fishing quotas; landing and processing requirements; and permit suspension conditions and procedures. In addition, current regulations limit the number of permits that can be issued.

The proposed regulatory changes will establish fishing quotas for the 2003-04 herring eggs on kelp fishing season. Individual herring eggs on kelp quotas will depend on the total herring fishery quota for San Francisco Bay established by the Fish and Game Commission under Section 163, Title 14, CCR.

The Department is recommending a closure for the 2003-04 San Francisco Bay herring fishery (Option 1). This results in a proposed fishing quota of **zero** tons. Conditions for reopening of the fishery will be outlined in the Department's 2003 Pre-Adoption Statement.

In addition to the recommendation for a fishery closure for the 2002-03 season, the Department is providing the Commission the option of considering a fishery quota within a 2,000- to 3,000-ton range (Option 2). If the Commission were to adopt a quota within this range, this would result in a 3.5- to 5.3-ton individual herring eggs on kelp quota for a "CH" gill net permittee and a 1 to 1.4 ton individual herring eggs on kelp quota for a non-"CH" gill net permittee. This range is based on alternatives the Department has reviewed but does not recommend as its preferred option. Additional information regarding quotas within this range will be provided to the Commission prior to the 2003 Pre-Adoption Statement.

Prior permittee status is given to permittees who meet all the requirements set forth in subsection (g) of these regulations and who suspend kelp in the immediately preceding season. If the no-fishery option is chosen for the 2003-04 season, the Department proposes that permittees with prior permittee status for the 2003-04 season retain prior permittee status for the 2004-05 season.

Royalty fees (i.e., performance deposits) are due to the Department on August 1<sup>st</sup> of each year. If the no-fishery option is chosen, the Department proposes that the performance deposit due with the applications is waived for the 2003-04 season. Permittees must still file an application with the Department. If an alternative quota is chosen by the Commission, the Department proposes that performance deposits be due to the Department's San Francisco Bay Area regional office no later than December 1<sup>st</sup>, 2003, to allow for the time necessary for the final quota option to be adopted by the Commission.

A minor correction to the form number for the 2003-2004 Herring-Eggs-On-Kelp Permit Application is recommended for purposes of accuracy.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in The Westin Long Beach, 333 E. Ocean Blvd., Long Beach, California on Saturday, August 2, 2003 at 8:30 a.m., or as soon thereafter as the matter may be heard

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in City Council Chambers, 100 Santa Rosa Avenue, Santa Rosa, California on Friday, August 29, 2003, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before August 25, 2003 at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@dfg.ca.gov](mailto:FGC@dfg.ca.gov), but must be received no later than August 29, 2003, at the hearing in Santa Rosa, CA. E-mail comments must include the true name and mailing address of the commentor. The regulations as proposed in ~~strikeout~~underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Sherrie Koell at the preceding address or phone number. Eric Larson, Herring Fishery Program, Department of Fish and Game, phone (650) 631-7730, 350 Harbor Blvd., Belmont, CA 94002, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at [http://www.dfg.ca.gov/fg\\_comm/](http://www.dfg.ca.gov/fg_comm/).

#### Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

### Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed action will not have a long-term significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, although the economic impact of a closure extending beyond one season would need evaluation. The Commission has made an initial determination that the adoption of the recommended regulations may have a temporary adverse economic impact directly affecting a number of California's small businesses. However, these economic impacts will not likely directly affect the ability of California small businesses to compete with businesses in other states. This is because most of the herring and herring eggs on kelp landings are transported out of State for "added value" processing and export (primarily to Japan and China).

The regulations proposed would directly affect approximately 10 commercial herring eggs on kelp fishermen and two processing plants in California, all of which are small businesses as defined under Government Code Section 11342.610. These direct impacts arise from interim management measures resulting in the close of the San Francisco herring eggs on kelp fishery for the 2003-2004 season only. Averaging herring eggs on kelp annual harvests and values from years 2001 and 2002, to represent nominal revenue potential for 2003-2004, we would project potential 2003-2004 ex-vessel revenues of approximately \$688,300. Among the 10 herring eggs on kelp permittees, this represents potential individual ex-vessel revenues of approximately \$68,830 annually on average, although deductions for the cost of doing business generally exceed 50% of value.

The proposed correction to the form number is being made for the sake of clarity and will not have an economic impact.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

Statewide, the closure of the 2003-2004 herring fishery would result in a loss of approximately \$1,383,500 of additional economic output foregone. This takes into account the multiplier effect that the herring eggs on kelp ex-vessel revenue creates as it cycles through California's economy. We project that each dollar of ex-vessel herring eggs on kelp revenue generates another \$2.01 as it moves through other business sectors within California. Recognizing that each \$1 million in commercial fishing revenue supports about 11.6 full and part-time jobs, we estimate the potential employment impact to be at most 36 jobs Statewide. This is because most of the "added value" processing of California herring takes place out of state, thus the actual employment impact to California would be much lower.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no new fees or reporting requirements stipulated under the proposed regulations.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

#### Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

### Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: July 1, 2003

John M. Duffy  
Assistant Executive Director